

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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JEAN BERNIER,

Plaintiff,

v.

ORC SWEET,

Defendant.

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**DECISION AND ORDER**  
15-CV-209-A

This *pro se* civil rights case was referred to Magistrate Judge Hugh B. Scott, pursuant to 28 U.S.C. § 636(b)(1) for the conduct of pretrial proceedings. On January 22, 2020, Magistrate Judge Scott filed a Report and Recommendation (Dkt. No. 104), recommending that defendant Sweet's motion for summary judgment (Dkt. No. 90) pursuant to Fed. R. Civ. P. 56 be granted.

No objections to the Report and Recommendation have been filed. Upon review of the Report and Recommendation and the underlying record, it is hereby

**ORDERED**, pursuant to 28 U.S.C. § 636(b)(1) and for the reasons set forth in the Report and Recommendation, the Court finds that plaintiff failed to exhaust administrative remedies as required by 42 U.S.C. § 1997e(a) because he did not file a timely inmate grievance claiming to have suffered retaliation caused by defendant Sweet for exercising a First Amendment right. Even though plaintiff attempts a collateral attack on findings of a New York court that may defeat the Court's subject matter jurisdiction<sup>1</sup>, the Court does not reach those issues, or issues of claim preclusion

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<sup>1</sup> Under the *Rooker-Feldman* doctrine, the Court may lack subject matter jurisdiction over claims requiring review of a state-court judgment asserted by a state-court litigant complaining of injury caused by the prior judgment. See *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280 (2005); *Sung Cho v. City of New York*, 910 F.3d 639 (2d Cir. 2018).

and issue preclusion, because simpler grounds to resolve the case are sufficient.

Defendant Sweet's motion for summary judgment (Dkt. No. 90) is therefore granted

because plaintiff failed to exhaust available administrative remedies as required by 42

U.S.C. § 1997e(a).

The Clerk shall enter Judgment for defendant ORC Sweet and close the case.

**IT IS SO ORDERED.**

*s/Richard J. Arcara*

HONORABLE RICHARD J. ARCARA  
UNITED STATES DISTRICT COURT

Dated: February 19, 2020